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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,513	08/19/2003	Victor T. Chen	279.494US2	4511
21186	7590	01/27/2005	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			LAYNO, CARL HERNANDZ	
		ART UNIT		PAPER NUMBER
		3762		

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/643,513	CHEN ET AL.
	Examiner <i>Carl H. Layno</i> Carl H. Layno 1/25/05	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 November 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-38 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 28-34 is/are allowed.  
 6) Claim(s) 1-6,8-13,16,21-24,26,27 and 35-37 is/are rejected.  
 7) Claim(s) 7,14,15,17-20,25 and 38 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 19 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 11/29/04.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment which was received by the Office on November 29, 2004.
2. Claims 1-38 are active and pending.

***Information Disclosure Statement***

3. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449) which was received by the Office on November 29, 2004.

***Claim Rejections - 35 USC § 102***

4. Upon further reconsideration of applicant's arguments and amendments to the claims, the Examiner is withdrawing the 35 U.S.C 102(e) rejection of Brandell '651, which was made against claims 1, 2, 8, 9, and 21 in the last Office action.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6, 8-13, 16, 21-24, 26, 27, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brandell '651 in view of DeGroot '975.

The Brandell '651 patent, cited by the Examiner in the last Office action, describes an implantable atrial defibrillator (Fig.1) incorporating many of applicant's claimed features including signal detection circuits (**50, 52, 54, and 56**), an atrial defibrillation circuit **74,76**, a microprocessor circuit **58**, and circuits for repetitively initiating a patient activated programmed delay **138** (Fig.3), it does not teach the use of a "therapy request threshold duration" in the manner claimed by the applicant. An externally located patient activator/programmer **100** (Fig.1) is in communication with the Brandell implanted device.

The DeGroot '975 patent also recites the details of an implantable atrial defibrillator **10** (Figs.1 and 2A) capable of generating patient activated shock pulses and having similar structural features. Unlike the Brandell '651 device, the DeGroot device utilizes a timeout period **T8** (Fig.17 – decision block **970**) to confirm the validity of the patient activated therapy request **966**. This period reads upon applicant's "therapy request threshold duration", since upon expiration of this duration the DeGroot device goes on to charge its capacitors **980** and deliver defibrillation shocks **1008** to the patient following the expiration of delays (**996, T9, T10**).

To have incorporated a timeout duration, like **T8** of DeGroot, on the Brandell '651 device, would have been an obvious modification to one of ordinary skill in the art in order to confirm that a valid request for atrial defibrillation was indeed received by the implanted defibrillator.

In regard to claims 2, 9, and 22, applicant's attention is directed to blocks **122** and **124** (Fig.2) of Brandell.

In regard to claims 3, 11, 23, 26, and 27, applicant's attention is directed to blocks **976,982** (Fig.17) of DeGroot, which teaches that the modified Brandell device incorporates circuits capable of uplinking notification messages to the patient activator once it has been confirmed that a valid therapy request was received.

In regard to claims 4 and 10, applicant's attention is directed to transceiver **102** (Fig.1 of Brandell) which is capable of bi-directional communications between the implanted device and an external programmer.

In regard to claims 5, 6, 12, 13, and 24, applicant's attention is directed to element **63** (Fig.1 – col.6, lines 32-39).

In regard to claim 16, external controller **100** of Brandell would inherently be equipped with a processor and attendant RF transceiver for generating and receiving messages from the implantable defibrillator **30** (Fig.1 – col.5, lines 44-58).

In regard to claims 35-37, the defibrillators of both Brandell '651 and DeGroot '975 may be activated by patient request through the use of magnetically operated Reed relay switches (element **63** [Fig.1] of Brandell and col.40, lines 39-42 of DeGroot). The modified implantable defibrillator of Brandell, with its associated "therapy request threshold duration" circuitry, and ability to generate delays prior to atrial shock delivery appear to read on applicant's claimed method steps.

*Allowable Subject Matter*

Art Unit: 3762

7. Claims 7, 14, 15, 17-20, 25, and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 28-34 are allowed.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed correspondence should be sent to the Office's Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

Carl H. Layno

CARL LAYNO  
PRIMARY EXAMINER

CHL  
1/25/2005